



State of California
Employment Training Panel

Arnold Schwarzenegger, Governor

May 28, 2009

Adrienne Bella
Talent and Development Coordinator
JDS Uniphase
430 North McCarthy Blvd
Milpitas, CA 95035

Dear Ms. Bella:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET05-0204 for the period November 8, 2004 through November 7, 2006.

Also enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment A to the audit report.

We appreciate the courtesy and cooperation extended to our auditors during the audit. If you have any questions, please contact Stephen Runkle, Audit Manager, at (916) 327-4758.

Sincerely,

Original signed by:

Stephen Runkle
Audit Manager

Enclosures

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JDS UNIPHASE

Agreement No. ET05-0204

Final Audit Report

For The Period

November 8, 2004 through November 7, 2006

Report Published May 28, 2009

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AUDITOR'S REPORT

Summary

We performed an audit of JDS Uniphase, Agreement No. ET05-0204, for the period November 8, 2004 through November 7, 2006. Our audit pertained to training costs claimed by the Contractor under this Agreement. Our audit was performed during the period July 14, 2008 through July 16, 2008, except for Finding No. 3 for which our report is dated August 28, 2008.

The Employment Training Panel (ETP) paid the Contractor a total of \$322,192.62. Our audit supported that \$320,726.62 is allowable. The balance of \$1,465 is disallowed and must be returned to ETP. The disallowed costs resulted from 2 trainees who did not meet training hour requirements, 4 trainees who started training prior to their hire date, and 1 trainee who did not meet retention period requirements. In addition, we noted an administrative finding for overpayment for administrative services to the subcontractor.

AUDITOR'S REPORT (continued)

Background

JDS Uniphase (JDS) was founded in 1981. The company designs and manufactures fiber optic communication products for the industrial, commercial, and consumer market. Prior to this Agreement, JDS had relocated its headquarters to San Jose to centralize corporate functions, consolidate engineering design and new product development, and provide a central hub for all product transfer and marketing functions.

This is the third Agreement between JDS and ETP. The telecommunication industry, in which JDS competes, constantly experiences rapid technology developments due to changes in industry standards and customer requirements. Since this rapid evolution requires frequent new product introductions and process improvements, JDS sought to retrain its frontline workers to function in a high performance workplace. Therefore, this Agreement provided for training in business skills, computer skills, continuous improvement, and manufacturing skills, as well as management skills training for select frontline managers and supervisors.

This Agreement allowed JDS to receive a maximum reimbursement of \$794,235 for retraining 1,705 employees. During the Agreement term, the Contractor placed 581 trainees and was reimbursed \$322,191.62 by ETP.

Objectives, Scope, and Methodology

We performed our audit in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. We did not audit the financial statements of JDS Uniphase. Our audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that JDS Uniphase complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Trainees were eligible to receive ETP training.
- Training documentation supports that trainees received the training hours reimbursed by ETP and met the minimum training hours identified in the Agreement.
- Trainees were employed continuously full-time with JDS Uniphase for 90 consecutive days after completing training, and the 90-day retention period was completed within the

AUDITOR'S REPORT (continued)

Agreement term.

- Trainees were employed in the occupation for which they were trained and earned the minimum wage required at the end of the 90-day retention period.
- The Contractor's cash receipts agree with ETP cash disbursement records.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion	As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported \$320,726.62 of the \$322,191.62 paid to the Contractor under this Agreement was allowable. The balance of \$1,465 was not earned according to the terms of the Agreement and must be returned to ETP.
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Views of Responsible Officials	The audit findings were discussed with Adrienne Bella, Talent Development Coordinator at an exit conference held on August 28, 2008. Ms. Bella agreed to bypass issuance of the draft report and proceed to the final audit report.
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The issuance of your final audit report has been delayed by the audit unit. Therefore, ETP waived the accrual of interest for the disallowed costs beginning August 29, 2008 through the issue date of this final audit report. The interest waiver (adjustment) was \$73.15, which was deducted from the total accrued interest.

Audit Appeal Rights	If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).
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Records	Please note the ETP Agreement, Paragraph 5, requires you to assure ETP or its representative has the right, "...to examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor... This right will terminate no sooner than four (4) years
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AUDITOR'S REPORT (continued)

from the date of termination of the Agreement or three (3) years from the date of the last payment from ETP to the Contractor, or three (3) years from the date of resolution of appeals, audits, claims, exceptions, or litigation, whichever is later.”

Stephen Runkle
Audit Manager

Fieldwork Completion Date: July 16, 2008, except for Finding No. 2 for which our report is dated August 28, 2008.

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement No. ET05-0204 and should not be used for any other purpose.

SCHEDULE 1 – Summary of Audit Results

JDS UNIPHASE

AGREEMENT NO. ET05-0204

FOR THE PERIOD

NOVEMBER 08, 2004 THROUGH NOVEMBER 07, 2006

	<u>Amount</u>	<u>Reference*</u>
Training Costs Paid By ETP	<u>322,191.62</u>	
Disallowed Costs:		
Training Hour Requirement Not Met	630.00	Finding No. 1
Ineligible Training Prior to Hire Date	481.00	Finding No. 2
Post-Training Retention Requirement Not Met	354.00	Finding No. 3
Subcontractor Payment	<u>-</u>	Finding No. 4
Total Costs Disallowed	<u>1,465.00</u>	
Training Costs Allowed	<u><u>320,726.62</u></u>	

* See Findings and Recommendations Section.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 – Training documentation maintained by JDS Uniphase (JDS) did not support training hours reported for two Job No. 1 trainees. Training Hour Requirement Not Met Therefore, we disallowed \$630 raining costs claimed for these trainees. Noncompliance with training hour requirements was previously disclosed in our audit of Agreement ET02-0305.

Title 22 California Code of Regulations (CCR), Section 4442(b) requires Contractors to maintain and make available records that clearly document all aspects of training. Classroom/laboratory training records must include the training date(s) and hours attended, training type, and the trainer and trainee's signatures.

Paragraph 2 (b) of the Agreement between JDS and ETP states, "Reimbursement for class/lab training for trainees in Job Number #1 will be based on the total actual number of training hours completed... providing the minimum and no more than the maximum hours are met." The Agreement required that Job No. 1 trainees receive a minimum of 24 and a maximum of 200 class/lab training hours.

The Contractor reported that Trainee No. 2 completed a total of 24.5 Class/Lab training hours. However, the Contractor's records did not support 6 of the Class/Lab hours reported for this trainee due to a missing roster for 3 hours reported on February 17, 2005 and the trainee's name and signature missing from the roster for 3 hours reported on June 7, 2006. Thus, we disallowed 6 class/lab hours for this trainee. As a result, Trainee No. 5 failed to complete the minimum of 24 training hours required by the Agreement.

The Contractor reported that Trainee No. 3 completed a total of 24 Class/Lab training hours. JDS reported this training to have been delivered to Trainee No. 3 for eight hours per day on February 14, 15, and 16 2006. However, the Contractor's records did not support the hours reported for this trainee due to his name and signature not appearing on the training rosters maintained by JDS for those dates. As a result, no rosters were found to support the training hours paid for Trainee No. 3. Thus, we disallowed 24 class/lab hours for this trainee.

Recommendation JDS must return \$630 to ETP. In the future, the Contractor should ensure that training records support hours submitted for reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 – Ineligible Training Prior to Hire Date Employment information shows three Job No. 1 and one Job No. 2 trainees were not employed full-time by JDS as of the start of training. Therefore, we disallowed \$481(37 hours x \$13 per hour) in training costs claimed for these trainees.

Exhibit A, paragraph III of the Agreement between ETP and JDS requires that retrainees be employed full-time by the Contractor as of the start date of that individual's training.

JDS payroll and training records revealed Trainee Nos. 1, 4, 5, and 7 had Class/Lab training hours reimbursed by ETP that occurred prior to being hired by JDS. EDD base wage information supports that three of these trainees were employed by a temporary employment agency prior to being hired by JDS. Since ETP did not approve "temporary to permanent" training for this Agreement, the training hours delivered prior to being hired by JDS are not eligible for reimbursement by ETP. Therefore, we disallowed 37 Class/Lab training hours for these trainees. The chart below shows their job number, first day of training per JDS rosters, JDS hire date and number of ineligible class/lab training hours delivered prior to their hire date.

Trainee No.	Job No.	First Day of Trg.	JDS Hire Date	No. Trg Hours Prior to JDS Hire Date
1	2	01/26/05	03/21/05	8
4	1	11/18/04	11/29/04	8
5	1	06/01/05	10/31/05	13
7	1	11/17/04	02/14/05	8
Total				37

Recommendation JDS must return \$481 to ETP. In the future, the Contractor should ensure that all retrainees are employed full-time by the Contractor as of the start of training.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – Payroll records provided by JDS revealed Trainee No. 6 did not meet post-training retention requirements upon completion of training. Therefore, we disallowed \$354 in training costs claimed for this trainee. Noncompliance with post-training retention requirements was previously disclosed in our audit of Agreement ET02-0305.

Post-Training
Retention
Requirement
Not Met

Exhibit A, Paragraph VII. A. of the Agreement between ETP and JDS states, "Each trainee must be employed full-time, at least 35 hours per week, with the Contractor for a period of at least ninety (90) consecutive days immediately following the completion of training. The period shall be completed no later than the last day of this Agreement..."

JDS reported that Trainee No. 6 ended training on August 9, 2006 and completed a post-training retention period from August 10, 2006, through November 7, 2006. However, JDS training records indicated that Trainee No. 6 actually ended training on January 26, 2006. Therefore, the earliest his retention period could have been completed was between January 27, 2006 and April 27, 2006.

However, JDS payroll records show that Trainee No. 6 terminated employment with JDS on February 17, 2006. Thus, Trainee No. 6 was retained for only 21 days of the 90 days required by the Agreement. Employment Development Department (EDD) base wage information supports the employer-reported termination date and shows no subsequent full-time employment in California within the term of the Agreement.

Recommendation JDS must return \$354 to ETP. In the future, Contractor should ensure that trainees meet post-training retention requirements prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 4 – The Contractor exceeded the maximum allowable payment to the Payments to subcontractor for administrative services. Therefore, we assessed Subcontractor an administrative finding for not complying with Unemployment Exceed Maximum Insurance Code. Allowable
Administrative
Costs Title 22 California Code of Regulation, Section 4442(a) (1) states, “Contractor shall maintain and make available records that clearly document all aspects of training and retention related to the training program.”

Unemployment Insurance (UI) Code, Section 10206(a) (1) (B) states administrative costs shall not exceed 15 percent of training costs.

Based on the total number of trainees placed, maximum allowable administrative costs (before trainees disallowed in this report) should not have exceeded \$42,024.99 = $[(\$322,191.62 \times 15 \text{ percent}) / 1.15]$. According to copies of paid invoices provided by JDS, JDS paid the subcontractor California Training Administration, Inc. (CTA) \$52,262.05 in “administrative fees” for this Agreement. Those invoices from CTA to JDS did not itemize and/or breakout any fees for alternate services from administrative fees. In response to a letter sent by ETP to confirm the total amount paid, CTA stated that they were paid \$41,884 for administrative fees and \$10,381 for what were described as “data entry services and other project costs.” The total of those separate fees they reported to equal \$52,265.

However, based on the fact that those services were not itemized on original CTA invoices as paid by JDS and were essentially related to the administration of the Agreement, we therefore included those fees as part of the total paid by JDS for administration. Thus, JDS paid \$10,241.05 (\$52,265.05 – \$42,024.00) in excess of subagreement terms and allowable administrative costs.

Recommendation In the future, JDS should ensure payments to subcontractors comply with subagreement payment provisions and do not exceed maximum allowable administrative costs.

ATTACHMENT A - Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 2006